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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/036,743
Filing Date: December 21, 2001
Appellant(s): TRIEBES ET AL.

Alan R. Marshall
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 19, 2007 appealing from the Office action mailed August 23, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

It is noted that the summary of the claimed subject matter begins on page 3 of 14.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,792,531	Littleton et al.	08-1998
4,302,852	Joung	12-1981

4,061,709	Miller et al.	12-1977

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 54-60, 62, 63 and 66-70 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Littleton et al. (US 5,792,531) in view of Joung (US 4,302,852).

Regarding claims 54, 55, 56, 58-60, 62, 63, 66, 67, 68 and 70, Littleton et al. disclose an elastomeric glove comprising a substrate body shaped to the contours of the hand, the substrate body including a layer made of at least one elastomeric block copolymer such as styrene-ethylene-butylene-styrene triblock copolymer (see col. 3, lines 13-20), the substrate body having an inside surface and an outside surface (Fig. 2A, #24); a donning layer overlying the inside surface of the substrate body and faces an internal, body-contacting surface of the elastomeric glove (see col. 3, lines 3-8); and a lubricant layer overlying an inside surface of the donning layer (see col. 4, lines 30-37).

However, Littleton et al. fail to disclose a chemical protection layer overlying the outside surface of the substrate body that faces an external, environment-exposed surface of the

elastomeric glove and is formed from a polymeric material that consists essentially of at least one crosslinked, modified silicone elastomer and has a thickness of from about 0.01 mm to about 0.20 mm.

Joung teaches that it is old and well-known in the analogous art to have an outer layer (Fig. 3, element 6 and see col. 3, lines 54-58) overlying the outside surface of an elastomeric glove to face an external, environment-exposed surface of the elastomeric glove formed from a polymeric material consisting essentially of at least one crosslinked, modified silicone elastomer wherein the modified silicone elastomer is methyl-modified silicone (see col. 4, lines 35-38) and has a thickness of from about 0.01 mm to about 0.20 mm (see col. 3, lines 26-29) for the purpose of providing the glove with an increased external slip resistance and an improved grip which is important in handling delicate surgical instruments, particularly in a wet surgical sight (col. 3, lines 54-58).

Littleton et al. and Joung are analogous arts, since both teach elastomeric gloves.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the outside, external, environment-exposed surface of the elastomeric glove in Littleton et al. with a chemical protection layer having a thickness of from about 0.01 mm to about 0.2 mm formed from a polymeric material consisting essentially of at least one crosslinked, modified silicone elastomer wherein the modified silicone elastomer is a methyl-modified silicone as suggested by Joung in order to provide increased external slip resistance and an improved grip which is important in handling delicate surgical instruments, particularly in a wet surgical sight.

Furthermore, regarding claims 57 and 69, Littleton et al. and Joung teach the elastomeric glove as shown above except for the modified silicone elastomer containing a diphenyl-modified dimethylsilicone. It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the outside surface of the elastomeric glove in Littleton et al. with a chemical protection layer of a crosslinked, modified silicone elastomer as suggested by Joung and to have modified the modified silicone elastomer to contain a diphenyl-modified dimethylsilicone, since it has been held that a change in the material would be an unpatentable modification in absence of showing unexpected results and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claim 65 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Littleton et al. (US 5,792,531) in view of Joung (US 4,302,852) and further in view of Littleton et al. (US 6,730,380).

Littleton et al. '531 and Joung teach the presently claimed elastomeric glove as shown above. However, Littleton et al. '531 fails to disclose the donning layer containing syndiotactic 1,2 polybutadiene.

Littleton et al. '380 teaches that it is old and well-known in the analogous art to have an elastomeric glove with a donning layer containing syndiotactic 1,2 polybutadiene (see col. 2, lines 30-32) for the purpose of providing a donning layer that does not crack or peel from the substrate body during storage or service and provides the glove with the ability to be easily donned without the presence of any powder (col. 3, lines 4-10).

Littleton et al. '531, Joung and Littleton et al. '380 are analogous arts, since they each teach elastomeric gloves.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the donning layer in Littleton et al. '531 to contain syndiotactic 1,2 polybutadiene as suggested by Littleton et al. '380 in order to have a donning layer that does not crack or peel from the substrate body during storage or service and to provide the glove with the ability to be easily donned without the presence of any powder.

Claim 61 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Littleton et al. (US 5,792,531) in view of Joung (US 4,302,852) and further in view of Miller et al. (US 4,061,709).

Littleton et al. and Joung teach the presently claimed elastomeric glove as shown above. However, Littleton et al. and Joung fail to disclose an outer layer overlying the chemical protection layer defining an external, environment exposed surface and grip surface of the elastomeric glove.

Miller et al. teach that it is old and well-known in the analogous art to have a glove formed of a plurality of layers of silicone rubber (see col. 4, lines 35-46) for the purpose of producing a glove that will impart maximum tactile sensitivity to the wearer without impairing his facility of manipulation while at the same time protecting the patient from contamination or infection (col. 1, lines 8-13).

Littleton et al., Joung and Miller et al. are analogous arts, since they each teach elastomeric gloves.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the elastomeric glove in Littleton et al. with an additional outer layer of silicone to overly the chemical protection layer of silicone and define an external, environment exposed surface and grip surface of the elastomeric glove as suggested by Miller et al. in order to provide a glove which will impart maximum tactile sensitivity to the wearer without impairing his facility of manipulation while at the same time protecting the patient from contamination or infection.

(10) Response to Argument

Appellants argue "in view of Littleton, et al.'s teachings, one of ordinary skill in the art would not be motivated to modify the hypoallergenic substrate body made of a mid block saturated styrene block copolymer (such as S-EB-S) of Littleton, et al. with any teaching of Joung, which is directed to an allergenic elastomeric support glove (i.e., natural latex). Thus, one of ordinary skill in the art would not be motivated to modify the hypoallergenic substrate body made of a mid block saturated styrene block copolymer (such as S-EB-S) of Littleton, et al. with the outer RTV silicone layer of Joung". Appellants further argue "no teaching or suggestion exists in either reference that an outer RTV silicone layer of Joung could be used with a hypoallergenic substrate. In fact, Joung only discloses that their outer RTV silicone layer can be used with their allergenic substrate (natural rubber)...no motivation or suggestion would have existed for one of ordinary skill in the art to combine these references as proposed by the Office Action".

First, it is to be pointed out that both Littleton et al. and Joung teach elastomeric gloves. Joung was merely cited to teach an outer silicone elastomer layer formed on the external,

environment exposed surface of an elastomeric glove and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the elastomeric glove in Littleton et al. with an outer layer of silicone elastomer to face the external, environment-exposed surface of the elastomeric glove as suggested by Joung in order to provide increased external slip resistance and an improved grip.

Secondly, although Littleton et al. teach elastomeric gloves formed from S-EB-S block copolymers and Joung teaches elastomeric gloves formed from natural latex, it is to be pointed out that Littleton et al. teach S-EB-S block copolymers as being an alternative to natural latex, which has been well known for forming elastomeric gloves (col. 1, lines 8-16). Therefore, Littleton et al. teach to interchange natural latex for S-EB-S block copolymers or other synthetic elastomers (col. 1, lines 8-19). So, as taught by Littleton et al., natural latex is interchangeable with S-EB-S block copolymers in the production of elastomeric gloves. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a conventional coating of silicone formerly used on the outside surface of natural latex as taught by Joung as the outer layer on the new S-EB-S gloves disclosed in Littleton et al. in order to provide the elastomeric gloves with increased external slip resistance.

Appellants state "that the teachings of the references must be viewed in their entirety, i.e., as a whole, to sustain a prima facie case of obviousness under 35 U.S.C. 103(a)...the appropriate test under 35 U.S.C. 103 (a) is not whether the differences between the prior art and the claims are obvious, but instead whether the claimed invention as a whole would have been obvious...the differences between a particular claim and the cited references cannot be viewed in a vacuum". Appellants then argue "when properly viewed as a whole, there is simply no motivation to

combine the references in the manner suggested in an attempt to render obvious the present claims".

However, it is to be pointed out that the references are being viewed in their entirety, i.e., as a whole and when viewed as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the outside surface of the elastomeric glove in Littleton et al. with a layer of silicone elastomer to face an external, environment exposed surface of the glove as suggested by Joung in order to provide the glove with increased external slip resistance. Again, both Joung and Littleton et al. teach elastomeric gloves. Eventhough Joung teaches a glove of natural latex and Littleton et al. teach a glove of S-EB-S block copolymer, Littleton et al. teach that natural latex can be interchanged with S-EB-S block copolymer (col. 1, lines 8-20). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a conventional coating of silicone formerly used on the outside surface of natural latex as taught by Joung as an outer layer on the new S-EB-S glove as disclosed in Littleton et al. in order to provide the glove with increased external slip resistance. Thus, the teachings of the references are being viewed as a whole and a *prima facie* case of obviousness under 35 U.S.C. 103(a) is sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Catherine A. Simone CAS

Conferees:

Nasser Ahmad

~~Jennifer Michener~~

GREGORY MILLS
QUALITY ASSURANCE SPECIALIST

March 29, 2007